

APPEAL NO. 010222

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 27, 2000. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury on _____ (all dates are 2000 unless otherwise noted), and that the claimant did not have disability.

The claimant appeals, challenging the sufficiency of the evidence, emphasizing certain medical reports, and asserting some procedural error. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a journeyman electrician. He testified that early on _____, he injured his low back helping unload some 25-foot light poles. How much the poles weighed, whether the claimant was always carrying the heavy end (the base of the pole was larger and heavier), and the mechanics of the unloading are disputed. The claimant did not complain of pain or an injury at the time. At around noon on _____, the claimant was terminated because he was not qualified for the job. Two coworkers and the foreman testified as to the events of that day.

Other factors which were discussed was a motorcycle incident on July 5 where the claimant's motorcycle apparently fell over and the claimant had some problems uprighting it. There was evidence, and the hearing officer noted, that the claimant had been having back problems, possibly from one or more prior injuries, in March and that some of the claimant's March complaints to Dr. A were similar to his current complaints.

The claimant testified that the day following the asserted injury, he woke up with severe pain in his back. The claimant sought treatment in a hospital emergency room on July 12 and subsequently has seen several doctors. The history recited in the medical reports is generally consistent with the claimant's testimony; however, as the hearing officer noted, the reports are "all based upon the Claimant's version of the events."

The claimant emphasized the medical evidence, which supports his position that he has acute myofascial dorsal and lumbar strain/sprain, and lumbar radiculitis, and complained that the hearing officer gave greater weight to other testimony than to his. We have frequently noted that the hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.) and this is

equally true regarding medical evidence. (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ.)

The claimant complains that the hearing officer asked one of the carrier's witnesses "leading questions" during the claimant's cross-examination. Our review of the record indicates that the hearing officer was only attempting to clarify what the witness was saying. The claimant also contends that the foreman "was not instructed to leave the room during testimony." It is not clear whether the foreman was the employer's representative who was entitled to remain in the hearing room or not. In any event, there was no objection raised at the CCH to preserve this point on appeal.

The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge